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Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1971.

No. 71-1192.

DONALD GOLDSTEIN, RUTH KOVEN and DONALD KOVEN,

Petitioners,

against

STATE OF CALIFORNIA,

Respondent.

On Writ of Certiorari to the Appellate Department of the Superior Court of the County of Los Angeles, State of California.

~~MOTION OF THE COMMONWEALTH OF PENNSYLVANIA FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND~~ BRIEF OF THE COMMONWEALTH OF PENNSYLVANIA *AMICUS CURIAE.*

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IN THIS

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—against—

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Respondent.

ON WRIT OF CERTIORARI TO THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA.

MOTION OF THE COMMONWEALTH OF PENNSYLVANIA FOR LEAVE TO FILE BRIEF *AMICUS CURIAE.*

The Commonwealth of Pennsylvania hereby respectfully moves for leave to file the attached brief *amicus curiae* in this case. Counsel for respondent has consented to the filing of this brief but the Commonwealth has been unable to obtain the consent of counsel for petitioners.

THE INTEREST OF THE *AMICUS CURIAE*.

The question presented in this case is the validity of California Penal Code Section 653h which makes it a crime to "pirate" sound recordings. In this context, the term "piracy" has come to mean the unauthorized duplication of sound recordings and the sale of such duplicate recordings.

On January 10, 1972, the General Assembly of Pennsylvania enacted an anti-piracy statute, Act of January 10, 1972, Act No. 184, § 1 et seq., 18 P. S. § 4878.1. This statute is substantially identical to Section 653h of the California Penal Code and any decision of this Court with respect to the validity of Section 653h will directly affect the enforcement of the Pennsylvania anti-piracy statute.

A challenge to the Pennsylvania statute was brought in the Middle District of Pennsylvania by a trade association of tape pirates. **Independent Tape Merchants Association v. J. Shane Cramer, et al.**, Civil Action No. 72-73, — F. Supp. — (M. D. Pa. 1972). The plaintiff in that case raised the identical issues with respect to the Pennsylvania statute as are being raised by petitioners in this case with respect to the validity of California Penal Code Section 653h. On July 24, 1972, Chief Judge Sheridan filed a Memorandum, Opinion and Order declining to assume jurisdiction on the basis of the doctrine of abstention and dismissed the Complaint.

Accordingly, the adoption by the Commonwealth of Pennsylvania of a substantially identical statute to that in issue in this appeal gives the Commonwealth a direct interest in the issues presented for decision. This interest is fortified by the fact that one challenge to the validity of the Pennsylvania statute, raising the identical issues here presented, has been made and, depending upon the Court's

decision in this case, additional challenges can be anticipated. For these reasons, the Commonwealth of Pennsylvania respectfully requests permission to file the attached brief *amicus curiae* in support of respondent herein.

Respectfully submitted,

J. Shane Creamer,
Attorney General of the
Commonwealth of Pennsylvania,
Department of Justice,
Harrisburg, Pennsylvania 17120.

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BRIEF OF THE COMMONWEALTH OF PENNSYLVANIA, *AMICUS CURIAE.*

A. The Interest of the *Amicus Curiae.*

The interest of the *amicus curiae* is set forth in the Motion to which this brief is appended.

B. Election to Join in the Brief of the People of the State of California, *Amicus Curiae.*

The Commonwealth of Pennsylvania, having reviewed the Brief of the People of the State of California and having obtained the agreement of the Attorney General of the State of California, hereby joins in the Brief of the People of the State of California, *Amicus Curiae,* In Support of the Respondent.

Respectfully submitted,

J. SHANE CREAMER,
Attorney General of the
Commonwealth of Pennsylvania,
Department of Justice,
Harrisburg, Pennsylvania 17120.